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10/027,142	12/26/2001	Michael M. Arbuckle		4265

7590 10/15/2004  
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EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/027,142

Applicant(s)

MICHAEL ARBUCKLE

Examiner

L. Amerson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-27 and 34-36 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 28 and 29 is/are rejected.
- 7) ☒ Claim(s) 3, 8-22 and 30-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/26/01.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

***Oath/Declaration***

Regarding the ASSIGNMENT copy, it does not include the notary's signature, or the notary's signature is in the wrong place.

***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 260. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

a. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. the word "means" is preceded by the word(s) "a" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is

specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

b. Claims 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by

Daleabout et al. Daleabout discloses a first and second hinged rail (fig. 1).

"Such that the rail may be folded from an extended position into an upright position" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 29, the recitation has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

c. Claims 1-2, 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Endelman ('685) in view of Daleabout et al. Endelman discloses an apparatus having a rectangular frame with a head and foot end, left and right rail with a front and rear section, movable carriage mounted on the frame with a flat upper surface, spaced shoulder pads mounted on the upper surface, a head rest, a plurality of spring members and a foot support assembly (fig. 1). Endelman discloses all of the limitations of the claimed invention except for the rails having hinges. Thus Daleabout et al teaches a hinged rail. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Endelman in view of the teaching of Daleabout et al that such hinges provide movement between a folded position and a non-folded position. Regarding the language, "so that its front and rear section may be folded to a substantially vertical position", "such that the carriage may be moved along the left rail and right rail between the head and foot ends" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 2, the headrest is adjustable (col. 5, lines 55-60). Regarding the language, "to a first flat position; a second inclined position and a third inclined position in respect to the carriage mat" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 4, the foot support is adjustable (col. 7, lines 60-64; fig. 22). As to claim 5, the recitation has not been given patentable weight because the recitations are purely functional in nature and do

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not recite any structure. As to claim 6, a first and second pole (30) in proximity to the head (fig. 1).

d. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Endelman ('685) in view Endelman (PG Pub '227). Endelman '227 teaches a first and second removable pole extension (fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Endelman in view of the teaching of Endelman that such a pole provides an extension to the device.

e. Claims 3 and 8-22 and 30-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 23-27 and 34-36 are allowed.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (703) 308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'L. Amerson', with a stylized, cursive script.

L. Amerson